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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/168272

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2015, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both notices of tax intercept issued to collect overissuances of FoodShare benefits as well as the underlying overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner filed this appeal to contest a February 2015 Notice of FoodShare Overissuance and a July 2015 tax intercept notice.

3. Petitioner was sent a Notification of FoodShare Overissuance dated February 11, 2015. This notice was sent to the correct address at the time – the above address. The amount of the overpayment is \$2122 .00 and is alleged to have occurred during the period of August 1, 2014 through January 2015.
4. The overpayment involved here came about as Petitioner allowed her ex-husband to move to her home and he applied for FoodShare, including her on the case. This was without her knowledge.
5. Petitioner's ex-husband was arrested in August 2014 for a domestic abuse incident and was no longer in Petitioner's home; in fact, a court order directed that he have no contact with Petitioner.
6. A repayment agreement dated March 3, 2015 was sent to Petitioner at the above address as were April, May and June 2015 'dunning' notices.
7. Petitioner was sent a tax intercept notice dated July 17, 2015 that informed Petitioner that her taxes were subject to intercept to repay a public assistance debt and the claim referenced at Finding # 3 was listed. The tax intercept was also sent to the address noted above. By the time of the tax intercept, a payment had been received and the amount of the overpayment reduced to \$2018.00.
8. The overpayment notices involved here and well as the tax intercept do contain appeal instructions.
9. This appeal was filed on August 27, 2015.

### **DISCUSSION**

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. *§49.85(3)(a)2, Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g)*.

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayments as well as the tax intercept. The agency did send the proper notices to Petitioner's correct address as required by §49.85, Stats. Petitioner did testify that she got the tax intercept notice but not the overpayment notice. She stated that the community in which she lives changed the address to her property which has caused confusion for the post office. Nonetheless, the change occurred about 2 years ago.

I cannot find Petitioner's appeal of the tax intercept to be timely. Petitioner received the tax intercept notice, the appeal deadline is 30 days and the appeal filed after that. As for the timeliness issue concerning the underlying overpayment, I understand that the governing entity changed the address but that was about 2 years ago. Further, there was an overpayment notice, a repayment agreement and 3 dunning notices all sent to the 'new', correct address. I do not believe that none of these were received so as to trigger an appeal or at least an inquiry about the overpayment. Given these factors, I do not find the appeal to be timely.

I do note, however, that if this appeal had been timely I would have adjusted the overpayment period so that it ended at least as of September 1, 2014. The record is clear that Petitioner's ex-husband was out of her home in August 2014. I do not believe Petitioner even knew about the FoodShare application or that she was included in the FoodShare household so as to report that he was no longer there. There is no law or policy preventing the agency from taking corrective action here. Without jurisdictional authority, the Division of Hearings and Appeals cannot do so and has no equitable authority. See, *e.g.*, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977).

### **CONCLUSIONS OF LAW**

That Petitioner's August 27, 2015 appeal is untimely with respect to both the overpayment and the tax intercept involved here.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of December, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 22, 2015.

Waukesha County Health and Human Services  
Public Assistance Collection Unit